



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,677	01/22/2004	Lance A. Hogan	HOG04-0001	5142
45766	7590	10/16/2006		
ANTOINETTE M. TEASE P. O. BOX 51016 BILLINGS, MT 59105				
			EXAMINER THAKUR, VIREN A	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,677	Applicant(s) HOGAN, LANCE A.	
	Examiner Viren Thakur	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/23/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. With regard to claim 6, it is unclear as to what is considered a *standard* vehicle cup holder, since cup holders are designed in vehicles to be configured to several sizes.

- b. With regard to claim 10, it is unclear as to what is meant by the dispenser and disposal compartment being held together by packaging since a means of engaging the two compartments together is not considered to be the same as packaging.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 8, 10, 14, 15, 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rebhorn (US 20020155202). As recited in instant claim 1, Rebhorn discloses a dual compartment container (Figure 3, Item 10) comprising a dispenser compartment (Figure 3, Item 14), a disposal compartment (Figure 3, Item 12), and a dividing wall (Figure 3, Not labeled see opposite items 14 and 12), wherein the volumetric ratio of the dispense compartment to the disposal compartment is in the range of 1:1 to 1:10 (Paragraph 0034), which covers the range 1:1.5 to 1:1.9. As recited in instant claim 5, Rebhorn discloses a container comprised of plastic (Paragraph 0041); wherein the bottom surface is flat (Figure 2, see bottom of container), as recited in instant claim 8; wherein the dispenser and disposal compartment are held together by packaging (Figure 5, Item 28; Paragraph 0038), as recited in instant claim 10; wherein the dispenser compartment comprises a first neck (Figure 3, Item 20) and a first cap (Figure 3, Item 30) and wherein the disposal compartment comprises a second neck (Figure 3, Item 22) and second cap (Figure 3, Item 18); and wherein the first cap is a flip top cap (Figure 3, Item 30). As recited in instant claim 17, the second neck (Figure 3, Item 22) is wider than the first neck (Figure 3, Item 20). As recited in claim 18, Rebhorn discloses wherein the total diameter of the container necks is 38 millimeters (which is equivalent to approximately 1.5 inches) (Paragraph 0015). Since the second neck is larger than the first neck and the

Art Unit: 1761

total diameter is 1.5 inches, it is interpreted that the first neck can be 0.5 inches and the second neck can be 1 inch, which thus meets the limitation of the claim. As recited in instant claim 19 the second neck and second cap are located on top of the container (Figure 3, Items 18 and 22).

5. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Gonzalez (US 5295575). Gonzalez discloses a dual compartment container comprising a dispensing compartment (Figure 1, Item 24), a disposal compartment (Figure 1, See compartment near item 41) a dividing wall (Figure 1, Item 36) and wherein the disposal compartment is punctured to provide a plurality of ventilation holes (Figure 1, Item 45 and Item 46). For examination purposes it is interpreted that the wall does not need to be continuous but only needs to provide separation between two compartments which can be used for disposal and dispensing.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1761

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fellers (US 6398071) in view of Gonzalez (US 5295575).

Fellers discloses a dual compartment container for storing sunflower seeds and disposing of the spit and shells (Column 2, Line 11-20) that additionally comprises a dividing wall (Figure 5, Item 28), for the purpose of providing a container that frees one hand of the consumer while consuming and disposing sunflower seeds.

Fellers does not disclose providing a plurality of ventilation holes on the disposal compartment.

Gonzalez discloses a compartmentalized toothbrush holder wherein one compartment (Figure 1, See compartment near item 41) comprises ventilation holes (Figure 1, Item 45 and Item 46) for the bristles of the toothbrush. Gonzalez teaches that the container protects the toothbrush from dust and airborne contaminants while also providing a means for drying and sanitizing the toothbrush (Column 1, Line 38-43).

Given the teachings of Gonzalez one having ordinary skill in the art would have been motivated to modify Fellers to include ventilation holes in the disposing compartment for the purpose of allowing the moist shucked shells to ventilate and dry. It is well known to one having ordinary skill in the art that a moisture rich environment of decomposing saliva and food product promotes the growth of bacteria. Therefore, as taught by Gonzalez providing ventilation holes will prevent the generation of an unsanitary environment within the enclosure.

9. Claim 1, 3, 4, 6-8 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fellers (US 6398071).

- c. With regard to instant claim 1, Fellers discloses a dual compartment container comprising a first compartment for storing and dispensing sunflower seeds (Figure 5, Item 22) and disposing of the saliva and shells into a second compartment (Figure 5, Item 12; Column 2, Line 11-20); with a wall dividing both compartments (Figure 5, Item 28). As recited in instant claim 8, Fellers discloses a base that is flat (Figure 5, See bottom of container).

Fellers does not disclose wherein the volumetric ratio of the dispensing compartment to the disposal compartment is 1:1.5 to 1:1.9.

However, it would have been obvious to provide a larger disposal compartment with respect to the dispensing compartment since it is known that unshelled seeds take up less space by volume when compared to the

shells. Providing a larger disposal compartment ensures that there is enough space within the disposal compartment to hold all the shells of the seeds that are stored in the dispensing compartment.

- d. With regard to instant claims 3 and 4, Fellers discloses as applied above.

Fellers does not disclose wherein the disposal compartment is made of an opaque material and the dispenser compartment is made of transparent material.

However, the choice of an opaque versus transparent material would have been obvious to a person having ordinary skill in the art, since it is well known that the purpose of transparency in a container is to view the contents within. As such, a transparent dispensing compartment allows the user to view the amount of seeds remaining in the container. It would have been obvious to use an opaque material for the disposal compartment since it is well known that exudates and residuals from an eaten sunflower seed would be unappealing and not desired to be viewed by the user.

- e. With regard to instant claims 6-7, Fellers discloses as applied above.

Fellers does not disclose wherein the container comprises a bottom surface dimensioned to fit into a standard vehicle cup holder and wherein the bottom surface is no greater than 3.5 inches in diameter.

Since the invention of Fellers is held and operated with one hand (Column 2, Line 11-18), one of ordinary skill in the art would have been

motivated to manufacture the base having a size that can complement a standard cup holder of a vehicle for the purpose of providing a portable seed container that the user can carry with him at all times. Therefore, the actual diameter of the claimed invention would not perform any differently than the diameter of the invention of Fellers, since both inventions are meant to be used with one hand, and would not provide a patentable distinction over the prior art.

- f. With regard to instant claims 21 and 24, Fellers discloses wherein one compartment contains unshelled sunflower seeds (Column 1, Line 66 to Column 2 Line 20) or pistachio nuts (Column 4, Line 49 to 52). With regard to instant claims 22 and 25, Fellers discloses wherein said upper compartment (Figure 5, Item 12) receives shells from the used or shucked seeds (Column 1, Line 66 to Column 2, Line 2). With regard to instant claims 23 and 26, Fellers discloses foregoing the need for a spit cup or bag (Column 2, Line 18-20). Therefore, the upper compartment (Figure 5, Item 12) can also contain shells and saliva.
10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fellers (US 6398071) as applied to claims 1, 3, 4, 6-7 and 21-26 above, and in further view of Gancalez et al. (US 20030052130). Fellers discloses as applied above.
- Fellers does not disclose wherein the bottom surface is corrugated.

Gancalez et al. teach a dual compartmented container having a base surface that is indented (Figure 1, Item 51 and 55), for the purpose of providing secure support for a dual compartmented container (Paragraph 0061).

Providing indentations so as to create "feet" for supporting a container is commonly used, as evidenced by Gancalez. Given the teachings of Gancalez one having ordinary skill in the art at the time the invention was made would have been motivated to modify Fellers to provide indentations for the purpose of providing stable support for a dual compartmented container.

11. Claim 5 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fellers (US 6398071) as applied to claims 1, 3, 4, 6-7 and 21-26 above, and in further view of Rebhorn (US 20020155202).

- g. With regard to claim 5, Fellers discloses as applied above. Fellers further discloses wherein said container can be made in the shape of novelty items (Column 4, Line 40-42).

Fellers does not disclose wherein the dispenser compartment and the disposal compartment are thermoplastic.

Rebhorn discloses a dual compartment container as cited above; further comprised of plastic (Paragraph 0041)

Since Fellers teaches providing molded shapes for the disclosed invention, it would have been obvious to one having ordinary skill in the art to use thermoplastic materials for manufacturing the container. Rebhorn

provides the evidence that thermoplastic materials are commonly used for molding containers into shapes.

- h. With regard to claims 11-13, Fellers discloses a dual compartment container wherein the two compartments are joined together by threading (Column 3, Line 49-55) and snapping/interlocking means (Figure 7, Item 54 and 56). Additionally, the disposing container (Figure 7, Item 12) comprises protrusion (Figure 7, Item 54) that engage into the indentation of the dispensing compartment (Figure 7, See below item 56). The dispensing compartment also comprises protrusions (Figure 7, Item 56) to engage with indentations in the disposing compartment (Figure 7, See above Item 54).

Fellers does not disclose wherein the dividing wall is formed by a surface of the dispenser compartment and a surface of the disposal compartment and blow molding of the compartments of the container.

Rebhorn teaches an "on the go" dual compartment container wherein both compartments are engageable (Figure 3) and wherein both compartments comprise a dividing wall (Figure 3, Not labeled) that forms the dividing wall for the container (Figure 2) when both compartments are engaged.

Rebhorn teaches two separately enclosed compartments for the purpose of providing two compartments that can be transported separately

without the contents within the compartments from spilling (Paragraph 0040). Rebhorn thus provides motivation to one having ordinary skill in the art at the time the invention was made to modify Fellers to provide two separately enclosed compartments for the purpose of preventing the contents of each from spilling in the event that one compartment needs to be transported separately from the other. Such a modification would be useful for providing more compact storage of the two compartments. Furthermore, blow molding is a common technique used to manufacture bottles and containers. Since Fellers teaches forming various novelty shapes for the container, one having ordinary skill in the art would have been motivated to blow mold the compartments of Fellers (Column 4, Line 40-42). Since the compartments of Fellers are separable, it is further suggested to one having ordinary skill in the art that the compartments are separately blow molded.

12. Claims 16, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebhorn (US 20020155202).

i. With regard to instant claim 16, Rebhorn discloses as cited above.

Rebhorn does not disclose wherein the second cap is a flip-top cap.

A second embodiment of Rebhorn teaches the use of a flip style cap for the second neck (Figure 6B; Paragraph 0039).

However, since Rebhorn teaches a container that is used "on the go," one having ordinary skill in the art at the time the invention was made would have been motivated to additionally use a flip top cap for the second neck. As disclosed by Rebhorn, flip top caps are known to be used to provide a container that permits for use on the go (Paragraph 0042-0043). Additionally, both the flip top cap and the screw cap serve the same purpose, which is to seal the openings and prevent the contents therein from spilling. Therefore, a different sealing means would not provide a patentable feature to the claims.

- j. With regard to instant claim 20, Rebhorn discloses as cited above. Rebhorn does not disclose wherein the distance between the bottom surface and the top of the second neck is about 9.5 inches. However, since Rebhorn does teach an elongate dual compartment container, changing the length of the container is a matter of choice to one having ordinary skill in the art, and would not provide a patentably distinct feature over the referenced art.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5221004 teaches the use of a plurality of apertures for the purpose of providing ventilation and drying to a reed. US 4250995 also

teaches the use of a plurality of apertures on a cover for a reed, for the purpose of providing ventilation to the reed. US 3589106 discloses a filter for sterilizing the air at the site of a telephone mouthpiece using a perforate cover comprising a filter for deodorizing and sterilizing the mouthpiece. US 20030168017 discloses a container for a cat outhouse that comprises apertures for the purpose of ventilating and dissipating the odor. US 5354468 discloses apertures exposed to the atmosphere to allow for the sanitization, cleaning and deodorizing of an evacuation system filter trap. US 4860927 discloses a dual compartment container having two different sized openings that is blow molded. US 6264068 discloses a one handed compartmentalized container comprising different sized opening and holding a plurality of food items. US 5392947 discloses a single container that comprises a transparent and opaque compartment. US 5316159 discloses a dual bottle container that is blow molded and engageable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur
Examiner
Art Unit: 1761



KEITH HENDRICKS
PRIMARY EXAMINER